IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4152 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE MOHIT S. SHAH sd/-
AND
HONOURABLE MR.JUSTICE K.M.THAKER sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**Yes**
2	To be referred to the Reporter or not ?	**Yes**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**No**
5	Whether it is to be circulated to the civil judge ?	**No**

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DHIRAJLAL G VADGAMA - Petitioner(s)
Versus
UNION OF INDIA & 2 - Respondent(s)

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Appearance :
MRS SANGEETA N PAHWA with MS VANDANA VINAYAK for Petitioner(s) : 1,
SERVED BY RPAD - (R) for Respondent(s) : 1 - 2.
MR MUKESH A PATEL for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE MOHIT S. SHAH
and
HONOURABLE MR.JUSTICE K.M.THAKER

Date : 22/11/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.M.THAKER)

The petitioner, who was working as a constable in the service of respondents, has preferred this petition under Article 226 of the Constitution against the order dated 16.12.2002 whereby the concerned authority rejected the claim of the petitioner for bonus for the period from 1993 to 2002.

2. This petition has arisen in the following factual background narrated in the petition:-

2.1 The petitioner joined the service of the respondent – Railways in 1971. Subsequently in 1992, he opted for voluntary retirement by an application dated 2.10.1992. However, after about two months, he changed his mind and by another application dated 11.12.1992 he sought to withdraw his application for voluntary retirement. As per the petitioner's case, the application for the request for withdrawing the application for voluntary retirement was submitted before it was accepted by respondent-authority, but the request was rejected by the respondent-authorities on 14.12.1992 and he was relieved from service on 2.1.1993.

2.2 Aggrieved by the said action of the respondent-authorities, the petitioner approached Civil Court by way of Regular Civil Suit No. 80 of 1993 challenging the order dated 14.12.1992. By the judgment and decree dated 19.4.1994 the trial Court declared that the decision of the respondent-authorities was illegal and null and void and directed them to consider the petitioner's service as continuous till the age of superannuation. The respondents went in appeal before the District Court. The District Court dismissed the appeal and confirmed the judgment of the trial Court by its judgment dated 5.9.1994.

2.3 Against the said judgment dated 5.9.1994, the respondents approached this Court by filing Second Appeal No.81 of 1995. The appeal came to be rejected by this Court by judgment and order dated 5.5.1999, and while dismissing the appeal, the respondents were directed in the following terms -

> “ ..... the decree passed by the Court below reinstating the plaintiff in service shall therefore be complied with within one month from today and the back wages and other consequential benefits shall be paid to the

> respondent-plaintiff within three months from today. It will be open to the appellants to require the plaintiff to undergo refresher training course in future."

2.4 From the averments in the petition, it appears that the said judgment was taken to the Hon'ble Supreme Court and the Special Leave Petition was dismissed by the Hon'ble Supreme Court by order dated 29.10.1999 and the order passed by this Court was confirmed.

2.5 Thereafter vide order dated 19.1.2000, the petitioner was reinstated and was directed to be posted at BRC division, and then he was given posting in Loco-electrical Department at Vadodara.

The petitioner subsequently voluntarily retired from service w.e.f. 10.6.2002.

2.6 After having retired, the petitioner, by way of application dated 12.10.2002, advanced his claim for bonus for the period from 1993 to 10.6.2002 (the date of his voluntary retirement). The application came to be rejected by the competent authority by order dated 16.12.2002 stating therein that "bonus" was not part of "wages" under Payment of Wages Act. The petitioner also made a representation dated 12.5.2003 for the same claim. Aggrieved by the said order dated 16.12.2002, the petitioner has preferred the present petition and has prayed for directing the respondent authorities to pay the petitioner amount of bonus for the period from 1993 to 2002 due to the petitioner.

3. Since no reply has been filed by respondents, the factual background narrated by the petitioner has remained uncontroverted.

4. Heard learned Advocate Mrs Sangeeta Pahwa with Ms Vandana Vinayak learned Advocate for the petitioner and learned Advocate Mr Mukesh Patel for respondent No.1. Respondents No.2 and 3 are served.

5. The learned counsel for the petitioner submitted that -

5.1 While rejecting the Second Appeal, direction for payment of back wages was granted by this Court and that, therefore, the petitioner is entitled to receive bonus also. Elaborating the said submission, the petitioner's counsel urged that bonus is “part of wages” and when direction for payment of “back wages” is granted, then, it would follow that the direction takes within its fold bonus also, since “bonus” is part of “wages”.

5.2 As an alternative contention, the petitioner's counsel submitted that in any case, since this Court granted “consequential benefits” also, the petitioner would be entitled for bonus. The said contention is advanced as a “fall back clause” to the aforesaid submission and to meet with the stand of respondent in their order dated 16.12.2002.

5.3 The petitioner's counsel has also relied on :-

(1) AIR 1984 SC 1813

(2) 1997 (11) SCC 752

(3) 1981 GLR 1070

(4) 2001 (2) GCD 1062

5.4 No other contention is raised on behalf of the petitioner.

6. Mr. Patel, learned advocate for respondent No.1 has only reiterated that bonus is not part of wages and therefore, the claim of petitioner was rightly rejected. He has not made any other

submission.

7. Before proceeding further, it is required to be noted at the outset that the petitioner has raised his claim for bonus on the basis of the judgment and direction of this Court in Second Appeal No.81 of 1995. It is pertinent to note that the petitioner was reinstated vide order dated 19.1.2000 and thereafter, he voluntarily retired from service w.e.f. 10.6.2002. Thus, the direction by this Court in the judgment dated 5.5.1999 would cover the period from the date of his termination (2.1.1993) till the date on which he came to be actually reinstated i.e. from 2.1.1993 to 19.1.2000 and not till the date on which he subsequently voluntarily retired i.e. 10.6.2002. In that view of the matter, even on the petitioner's own showing, the petitioner's claim for bonus from 20.1.2000 to 10.6.2002 cannot be said to be covered within the scope of the directions given by this Court (through one of us) vide the judgment and order dated 5.5.1999 in Second Appeal No.81 of 1995.

8. In light of the submissions, the question which arises for consideration is whether “bonus” is part of “wages”. For reply we have to turn to the definition of the term “wages”. Since the petitioner's claim is for bonus, it would be appropriate to first take into account the definition of the term “wage” under Payment of Bonus Act, 1965 (“Bonus Act”, for short). Section 2(21) defines the term “salary or wage” as follows :-

> “(21) “salary or wage” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include -
>
> (i) any other allowance which the employee is for the time being entitled to;

(ii) ....

(iii) any travelling concession;

(iv) any bonus (including incentive, production and attendance bonus);

(v) to (vii) ....

(emphasis supplied)

It is provided under 2(21)(iv) that “salary or wage” does not include any bonus (including incentive, production and attendance bonus). By the said definition “bonus” is expressly excluded from “salary or wage”.

9. At this stage, so as to further examine the said contention, we may also refer to the definition of the term “wages” under the Industrial Disputes Act, 1947. In the Industrial Disputes Act, 1947, the term “wages” has been defined in Section 2(rr) as follows :-

“2(rr) “wages” means all remuneration capable of being expressed in terms of money, which would, if the terms of employment, expressed or implied, were fulfilled, be payable to a workman in respect of is employment or of work done in such employment, and includes -

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) to (iv) ... .

but does not include -

(a) any bonus;

(b) & (c) .... (emphasis supplied)

As can be seen from the said definition, “bonus” is expressly excluded from this definition. Thus, bonus is not part of “wages” under the provisions of Industrial Disputes Act, 1947 either.

10. In view of the situation arising from the provisions under the Bonus Act and the Industrial Disputes Act, 1947, the petitioner's advocate relied on the definition of the term “wages' provided under the Payment of Wages Act, 1936 (“P.W. Act”, for short). In the P.W. Act, the term “wages” has been defined under Section 2(vi) as follows :-

> “(vi) “wages” , means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes -
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> (a) any remuneration payable under any award or settlement between the parties or order of a court;
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> (b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
>
> (c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);
>
> (d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
>
> (e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force ;
>
> but does not include -
>
> (1) any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;
>
> (2) & (3) ... ...
>
> (emphasis supplied by petitioner)

10.1 The said definition provides what is and what is not included in “wages”. As per Section 2(vi)(c) any additional

remuneration payable under the terms of employment (whether called a bonus or by any other name) would be covered within the purview of wages. Such additional remuneration may be in the name of or by way of bonus also, provided it is payable under the terms of employment. Meaning thereby, if “bonus” is payable under the terms of employment then it would be covered within the purview of wages as per 2(vi)(c). Therefore, it is necessary for him, who claims that bonus was part of his wages, to demonstrate from terms of employment and to establish, that by virtue of the terms of employment, bonus was payable to him under the terms of employment. However, in the present case, the petitioner has not brought on record the “terms of employment” and has not established that in the respondent-Railways, and particularly in his case, bonus was payable as per and under the terms of employment i.e. his terms of employment provided for payment of bonus. In the petition there are even no pleadings to this effect. When the petitioner has not pleaded and has not established by cogent evidence that payment of bonus was part of, that is - included in, his terms of employment and was payable under the terms of his employment, then it would not be permissible for the Court to venture into realm of presumption and to presume that payment of bonus was part of, and was included in, the petitioner's “terms of employment”. Thus, in present case, it is not possible, in absence of terms of employment, to assume and on that basis to hold that “bonus” was part of and included in petitioner's terms of employment and thereby was part of his wages, and was payable to him under terms of employment. As a consequence, it is not possible to hold that bonus, in the present case, would fall within purview of Section -2 (vi)(c) of Payment of Wages Act. Now, we may turn to the provisions of Section 2(vi)(1). By virtue of Section 2(vi)(1) “bonus” is excluded from “salary or wage” by providing “but does not include any bonus (whether under a scheme of profit-sharing or otherwise) which does not form part of the remuneration

payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court". In the present case, as noted above, the terms of employment are not brought on record to show that bonus was payable under the terms of employment and was part of remuneration. Hence, the direction for payment of "back wages" cannot be construed or read to mean that it included direction for payment of bonus also, because while granting the said direction, the Court did not expressly specify bonus also.

11. At this stage, it is appropriate to take note of the provisions contained under Section 32 of Bonus Act. The petitioner was in service with the respondent-Railways. Therefore, the provisions under Section 32(iv) are relevant and needs to be considered. Section 32(iv) of the said Act is as follows :-

> "32. Act not to apply to certain classes of employees. - Nothing in this Act shall apply to -
>
> (i) to (iii) ... ...
>
> (iv) employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority;"

As can be seen from the aforesaid Section 32(iv), the provisions under the Payment of Bonus Act, 1965 are not applicable to the employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority i.e. such employees are excluded from the applicability of the provisions under the said Act. Since the petitioner was employed by and was in service of respondent-Railways, the provisions under Section 32(iv) of the said Act are also attracted in the present case.

12. Before proceeding further, we may also refer to the provisions of the Payment of Gratuity Act 1972. The definition of "wages" in Section 2(s) of the said Act reads thus:-

> "2(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of is employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."
>
> [emphasis supplied]

It can be seen from this definition also that bonus is not included in "wages", or it is rather excluded.

13. At this stage, it is appropriate to refer to the judgment in Textile Labour Association vs OL of Jubilee Mills Ltd., 2000 (4) GLR 2923. While dealing with the issue as to what constitutes "workmen's dues", this Court (Coram : Hon'ble Mr. Justice M.S. Shah) in the said judgment has held as under :-

> "17.4 The wide definition of term "wages" in the Payment of Wages Act, 1972 was with a definite purpose. The said Act was enacted for the purpose of enabling the workman to recover all his dues from the employer by approaching the one and same authority (except when any specific rights are conferred on a workman under a separate enactment with a separate authority constituted under the said Act such as the Provident Fund Act or the Payment of Gratuity Act), and therefore, "bonus" payable under the terms of employment or under a settlement/award or a Court order was also included in the definition of wages. Hence, wide definition of "wages" under the Payment of Wages Act cannot be applied for all purposes irrespective of the underlying object or scheme of the provisions of the other statutes. Relevant provisions of Secs. 529 and 529A have been enacted to give priority to the workmen;s dues and the said provisions expressly refer to the provisions of the I.D. Act which contain a narrow definition of "wages"."
>
> (emphasis supplied)

14. It is pertinent to note that in present case, the controversy before the trial Court was in respect of the termination of present petitioner. While setting aside the decision of the

respondent-authorities, the trial Court declared that the decision of the respondent-authorities was null and void. This Court while confirming the judgment and decree of the trial Court directed the respondent-authorities to comply with the direction of reinstatement and to pay “back wages and other consequential benefits”. The direction given by the Court is also required to be considered in light of the factual background of the dispute and, therefore, the direction for payment of “back wages”, has to be considered in light of the meaning of the term “wages”. As noted earlier, the definitions of the said term under the Industrial Disputes Act, 1947 as well as under the Payment of Bonus Act, 1965 and Payment of Gratuity Act specifically exclude bonus from the purview of the term “wages”.

15. This aspect has now been settled by the Hon'ble Supreme Court in the recent judgment in Hamdard (Wakf) Laboratories vs Dy. Labour Commissioner, in (2007) 5 SCC 281. In the said case, services of certain workmen were terminated on the ground that they had participated in illegal strike and pursuant to the adjudication of the dispute in connection with the said termination, the Industrial Tribunal had, by an award dated 26.5.1993, directed reinstatement of the said employees (except those with whom settlement were arrived at) with further direction that they should be paid 50% of their wages/allowances which they were getting in June 1993. The said award attained finality as the writ petition preferred thereagainst was dismissed by an order dated 3.11.1995 and the Special Leave Petition filed thereagainst was also dismissed. The proceedings under Section 6-H(1) of the Industrial Disputes Act, 1947 were instituted for claiming back wages and bonus. In connection with the said proceedings, the Additional Labour Commissioner had issued recovery certificates and subsequently the directions were complied with. The workmen filed another application before the Labour Commissioner claiming bonus for the period 1987 to 1996. In the judgment, while dealing

with the contention that in view of the definition of the term “wages” contained in Section 2(y) of the U.P. Industrial Disputes Act, 1947 and Section 2(21) of the Payment of Bonus Act, bonus does not fall in the definition of wages under Section 2(y) of U.P. Industrial Disputes Act, 1947, their Lordships, after considering the definition of the term “wages” under Section 2(y) of the U.P. Industrial Disputes Act and under Section 2(rr) of the Industrial Disputes Act, 1947 as well as of the term “salary or wage” as defined by Section 2(21) of the Payment of Bonus Act, 1965 and also by Section 2(vi) of Payment of Wages Act, 1936, held in para 16 that “Different statutes, enacted by Parliament from time to time, although beneficial in character to the workmen, seek to achieve different purposes. Different authorities have been prescribed for enforcing the provisions of the respective statutes. The authority under the Payment of Wages Act, 1936 is one of them” and then in para 21 their Lordships held that “Definition of 'wages' within the meaning of the Act does not include 'bonus'. It, however, includes allowance. The Payment of Bonus Act also excludes bonus for the purpose of calculating the amount of bonus to be determined in terms of Section 10 thereof.”.

15.1 Since in the present case we are essentially concerned with the directions given by the Court in the judgment i.e. concerned with interpreting the judgment and the direction therein, it is necessary to be guided by what their Lordships have held in the said judgment in this regard. In the said judgment their Lordships further held in para 24 and 25 that “A judgment, it is trite, must be reasonable. It must be construed in such a manner so as not to offend the provisions of any statute. It must not be held to be contrary to any statutory provisions. In Gajraj Singh vs. State of UP (2001 (5) SCC 762) - A three-Judge Bench of this Court held: “A doubt arising from reading a judgment of the Court can be resolved by assuming that the judgment was delivered consistently with the provisions of law and therefore a course or procedure in departure

from or not in conformity with statutory provisions cannot be said to have been intended or laid down by the Court unless it has been so stated specifically".

15.2 Then in para 26 of the judgment, their Lordships have also held that "Wages either in its ordinary meaning or statutory ones would not include bonus". Then in para 39 it is also held that "The Labour Commissioner in view of the decision of this Court in Muir Mills Co. Ltd. (AIR 1955 SC 170) has evidently committed a manifest error in opining that bonus is deferred wages. Once it is excluded from the purview of the term "wages" under the Act, such a view was impermissible in law, particularly, when the appellant denied and disputed the right of the workmen to claims. Both the learned Single Judge and the Division Bench of the High Court also fell into the same error. The learned Judges even did not address themselves the right questions. They, thus, misdirected themselves in law".

16. We may now consider the decisions relied upon by the learned counsel for the petitioner. In Rashtriya Mill Mazdoor Sangh vs. Model Mills, Nagpur, AIR 1984 SC 1813. The petitioner Union had made demand for grant of bonus which was resisted by the employer, Model Mills, Nagpur on various grounds and the Hon'ble Supreme Court, in light of the legal contentions, examined the below mentioned two issues;

(a) On the appointment of an authorised controller under Section 80-A of IDR Act by the Central Government in respect of an industrial undertaking, does it acquire the status of an establishment engaged in an industry carried on under the authority of department of Central Government;

(b) If the answer to the first question is in affirmative, whether the employees employed in such industrial undertaking are excluded from the operation of the Bonus Act.

While dealing with the first issue, their Lordships rejected the contention of the employer-establishment and held that, in order to attract Section 32(iv) it must be shown that the employees sought to be excluded from the operation of the Bonus Act have been employed by an establishment engaged in any industry carried on by or under the authority of the department of the Central Government. In the present case, the petitioner was, at the relevant time, an employee in respondent-Railways and in light of said factual aspect, no dispute or contention in the petition has been raised disputing that the respondent-Railways (employer of petitioner) is not an establishment engaged in an industry carried on by or under the authority of the department of Central Government. It was, while dealing with an incidental argument to the effect that the National Textile Corporation, which had taken over the respondent company, would not be liable to pay bonus for the period when the authorised controller was in-charge of the management of respondent company, that their Lordships held, in Para 24 of the said judgment, that “.... Sub-clause [c] of sub-section (2) of Section 5 provides that wages, salaries and other dues of the employees of the Textile Undertaking in respect of any period after the management of such undertaking had been taken over by the Central Government, shall, on and from the appointed day, be liability of the Central Government and shall be discharged, for and on behalf of that Government, by the National Textile Corporation 'as and when payment of such loans or amounts become due or as and when such wages, salaries or other dues become due and payable'. Further, the appointed day has been specified as the 'first day of April 1974'. The expression 'wages, salaries and other dues of the employees” would, without a doubt, include statutory bonus

payable under the Bonus Act [emphasis supplied]. Thus, it is in respect of “statutory bonus payable under the Act”, that the Hon'ble Supreme Court held that, “the expression wages, salary and other dues of the employees” would, without a doubt, include statutory bonus payable under the Bonus Act”. So as to derive support from the said judgment it would be necessary to establish that (i); the claim made by the petitioner is for “statutory bonus” i.e. bonus calculated, arrived at and payable in accordance with the provisions under the Bonus Act [e.g. Sections 4 to 7, 15 etc.] and that (ii) bonus so arrived at is payable to him under the Bonus Act. In the present case, there are no pleadings to the said effect in the petition. Even if the absence of specific pleadings is overlooked then also the provisions of Sections 32(iv) and 2(21) stare in the face and in light of the said provisions, when read conjointly, the petitioner's claim, as discussed above, would not, in facts of the present case, constitute claim for “statutory bonus” or for “statutory bonus payable under the Act”. As per the definition of “salary or wages” under Section 2(21) of Payment of Bonus Act, 1965, the said term does not include 'bonus' in its purview and it is specifically excluded. Further, in view of the provisions of Section 32(iv) also, the petitioner's claim would not amount to claim for “statutory bonus payable under the Act.” Hence, in the facts of present case, the said judgment does not provide assistance to the contention of the petitioner.

17. The learned counsel for the petitioner has also relied on the judgment of the Hon'ble Supreme Court in Regional Director, ESI Corpn. vs. Enfield India Ltd. (1997) 11 SCC 752. In the said case, the Employees' State Insurance Corporation had made a demand against the respondent-employer for contribution towards employees state insurance by taking into account “incentive bonus”. The said demand by the Employees' State Insurance Corporation was opposed by the establishment, inter-alia, on the ground that “incentive bonus” did not form part of the wages. The

said contention was accepted by the Hon'ble High Court and against the said decision, the Employees' State Insurance Corporation had approached the Hon'ble Supreme Court. While allowing the appeal, their Lordships held that “wages” as defined under Section 2(22) of the Employees' State Insurance Act, 1948 would include, amongst others incentive allowances paid to the workmen and that, therefore, incentive bonus will have to be accounted for calculating the contributions. It is required to be noted that in the said case, the controversy arose in view of the contention of the employer -establishment that it was not obliged to pay contribution on the component of bonus. Thus, what was in issue was as to whether there was any obligation on the employer to take into account the component of incentive bonus while calculating and making the contribution towards employees state insurance and that issue was decided in light of Section 2(22) of the Employees' State Insurance Act, 1948. It was while dealing with the said contention that the Hon'ble Supreme Court referred to the definition of “wages” in Employees' State Insurance Act, 1948 under Section 2(22) and held that bonus would be included within the purview of the said term defined under the said Section. The obligation or liability to pay bonus was not an issue in the said matter.

17.1 So far as the provisions of ESI Act are concerned, it can be seen from the definition of “wages” under Section 2(22) of ESIC Act that it is materially different and wider than the definition of said term under Payment of Bonus Act or Industrial Disputes Act or Payment of Wages Act. The said definition under Section 2(22) reads thus :-

> “2(22). “wages” means all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not

exceeding two months, but does not include -

(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d) any gratuity payable on discharge;"

Further, one reason for providing wide definition of "wages" under ESI Act is that the quantum or extent of employer's contribution depends on "wages" and therefore on the components constituting "wages". Hence, the said definition would not help or cannot be imported in the present case for calculating "back wages" or for injecting "bonus" in "back wages".

18. We must, at this stage, also note that the learned counsel for the petitioner during her submissions, fairly invited attention of the Court to the judgment of the Hon'ble Supreme Court in TI Cycles of India vs. MK Gurumani reported in (2001) 7 SCC 204 wherein while dealing with the issue as to whether incentive wage paid in respect of extra work would be included for the purpose of computing wages for payment of gratuity, the Hon'ble Supreme Court in the said case has held "... ...the authorities have completely missed the scope of the scheme and have incorrectly interpreted the same. Inasmuch as both the High Court and the authorities have incorrectly understood the position in law and have wrongly held that the concept of "wages" under the Act would include bonus and that even on facts the Scheme would attract Section 4(2) of the Act. Proviso to Section 4(2) of the Act is to the effect that in case of a piece-rate employee, daily wage shall be computed in a particular manner but that is not the rate at which the wages are paid in the present case at all. Therefore, Section 4(2) of the Act is not attracted in the case of the present

Scheme with which we are concerned".

19. At this stage, we may refer to the judgment of this Court in Bipinchandra vs. Navin Flourine Industries reported in 1981 GLR 1070 on which the learned counsel for the petitioner has placed strong reliance. In the said case, this Court, while directing the respondent-employer to pay back-wages to the petitioner, specifically directed payment of bonus for the period in question. When the Court expressly includes any component while giving direction for payment of back wages then such component becomes payable even if it is otherwise not contemplated or specifically provided by law but in absence of any specific direction, presumption cannot be made by Court, and that too while interpreting judgment, that the benefit not expressly provided by law has also been granted. Actually, in the aforesaid judgment (1981 GLR 1070) the fact that while directing payment of back wages, the Court also expressly mentioned bonus which would mean that the Court consciously included direction for payment of "bonus" because in absence of such a direction, the same would not have been payable and would not have been paid by the employer in light of the definition of the term "wages" contained under the Industrial Disputes Act, 1947 and/or Payment of Bonus Act, 1965. In this view of the matter, the said judgment does not help the petitioner, also in view of the fact that in the present case the component of bonus has not been specifically included or granted by the Court while directing payment of consequential benefits.

20. The learned counsel for the petitioner has also relied upon the judgment of this Court in Vepar Vikas Coop. Bank Ltd. vs. Ghanshyam Lallubhai Patel, 2001 (2) GCD 1062. In the said case, the petitioner - bank had relieved the respondent - workman and the said action was challenged before the Labour Court by way of an application under the Bombay Industrial Relations Act. The said application was rejected by the Labour Court. The decision of the

Labour Court was challenged before the Industrial Court in appeal. The Industrial Court in its judgment directed the petitioner-bank to pay full pay from 30.7.1977 to 12.10.1981. The said order was not complied with by the petitioner - bank. Therefore, contempt petition was filed by the respondent-workman before this Court. In the said contempt proceedings, a settlement was arrived at whereby the petitioner-bank had agreed to pay 72% of the pay from 30.7.1977 to 12.10.1981. It was in respect of the said settlement that a dispute between the parties arose after payment pursuant to the settlement was made by the petitioner - bank to the respondent-workman inasmuch as the workman, inter-alia, contended that while calculating the payable amount, he was not only entitled to pay but was also entitled for benefits including bonus. It was while interpreting the said terms of the settlement that this Court, while relying on the earlier referred judgment of the Court reported in Bipinchandra vs. Navin Flourine Industries, 22 GLR 1070 held that bonus was required to be included while making payment of wages at the rate of 72% as agreed by virtue of the settlement. The said case was in respect of an establishment which was governed by the provisions of the Bombay Industrial Relations Act, 1946 wherein the term “wages” is differently defined under Section 3(39). It would be appropriate for the purpose of the present case to refer to the definition of the term “wages” under Bombay Industrial Relations Act, 1946. The said definition reads thus :-

> “Wages” means remuneration of all kinds capable of being expressed in terms of money and payable to an employee in respect of his employment or work done in such employment and includes -
>
> (i) any bonus, allowances (including dearness allowance), reward or additional remuneration;
>
> (ii) to (vi) ... ...”

As can be seen from the said definition, bonus is specifically included within the term “wages” under the said Act.

In the present case, the provisions of Bombay Industrial Relations Act, are not applicable. Therefore, it would not be permissible to take into account the definition of the term “wages” as provided under the provisions of BIR Act, 1946. Since the judgment of the Court in the said case reported in 2001 (2) GCD 1062 is based on the definition of the term “wages” under BIR Act, 1946, the same is not helpful to the petitioner in the present case.

21. Having considered all the relevant statutory provisions, the case law cited at the Bar and the submissions of the learned counsel, we are unable to accept the contention urged on behalf of the petitioner that “bonus” was included in “wages” or “back-wages”.

22. The learned advocate for the petitioner, in the alternative, contended that in any case the petitioner would be entitled for bonus in view of the direction granting “consequential benefits”.

23. In our view, the said contention of the petitioner is untenable for the reason that normally “consequential benefits” would mean benefit of continuity of service, seniority, pensionable service etc. or the benefits which are available and payable by virtue of and under express terms of employment and any applicable statute or are expressly granted by the Court and it would not automatically, or a fortiori, mean or include a benefit which is not forming part of “wages” payable under terms of employment. Otherwise the provisions excluding “bonus” from the purview of “wages” under different statutes would be rendered meaningless. At the cost of repetition also, it is to be restated that the terms of employment are neither produced nor established and it is not demonstrated that it included bonus as part of wages as per terms of employment and thus it is not open for Court to assume such position. Further, as held by this Court in Textile

Labour Association vs. OL Jubilee Mills 2000 (4) GLR 2923 wide definition under one statute cannot be applied for all purposes irrespective of the underlying object or scheme of the provisions of other statute. In facts of present case, in view of the provisions contained under Section 2(21) of the Payment of Bonus Act, 1965, which excludes “bonus” from purview of “wage” and/or under Section 2(rr) of Industrial Disputes Act, 1947 and/or under Section 2(s) of Payment of Gratuity Act, 1972 and also for the reason that the said benefit is not expressly granted by the Court, as was done by this Court in the judgment relied on by petitioner's Advocate viz. 1981 GLR 1070, it is not possible to hold that the grant of “consequential benefits” would include bonus.

24. In view of the above discussion, the petitioner has failed to substantiate his claim for bonus for the period 1993 to 2002 either on the basis of the direction for payment of “back wages” or on the basis of direction for grant of “consequential benefits”.

25. Thus, the relief prayed for by the petitioner can not be granted and the decision of the respondent-authorities cannot be faulted with.

25. In the result the petition fails and the same is dismissed.

Rule is discharged.

(M.S. SHAH, J.)

(K.M. THAKER, J.)

zgs/-